

**Department of State Health Services
Council Agenda Memo for State Health Services Council
February 24-25, 2016**

Agenda Item Title: Repeal of rules concerning the Texas Women's Health Program

Agenda Number: 4.b.

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Texas Women's Health Program (TWHP) is located in the Women's Health Services Division and Texas Women's Health Program Branch.

In 2014, the Sunset Advisory Commission reviewed the Texas Health and Human Services agencies, including its women's health programs. In December 2014, the Sunset Commission issued the management decision to require the Health and Human Services Commission (HHSC) to consolidate the women's health care programs in order to improve service and efficiency for clients and providers. This decision included the recommendation to consolidate the existing Texas Women's Health Program at HHSC and the Expanded Primary Healthcare Program at the Department of State Health Services (DSHS) into one program and division at HHSC.

In response to the Sunset Commission's recommendations, the 84th Texas Legislature passed S.B. 200 to transfer client services functions performed by DSHS to HHSC. Furthermore, the 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015, merged the women's health strategies (DSHS Strategy B.1.3., Family Planning Services, and Strategy B.1.4., Community Primary Care Services) into a single strategy within the HHSC Budget (HHSC Strategy D.2.3., Women's Health Services). To increase access to women's health and family planning services, Rider 76, Article II, allocated an additional \$50 million for the new women's health programs.

The transition plan developed by HHSC included the transfer of women's health services performed in the HHSC Texas Women's Health Program and DSHS Expanded Primary Health Care Program to HHSC as of September 1, 2015. HHSC's transition plan also details the consolidation of the Texas Women's Health Program and Expanded Primary Health Care program.

On July 1, 2016, HHSC will consolidate the Texas Women's Health Program and the Expanded Primary Healthcare Program into a new program fully funded by state general revenue. The new program will be named Healthy Texas Women. The Healthy Texas Women program will be a successor program to the Medicaid Women's Health Program and therefore subject to Texas Human Resources Code §32.024(c-1). These proposed rules are intended to transition and consolidate the Texas Women's Health Program and the Expanded Primary Healthcare Program into the Healthy Texas Women program, which will be operated by HHSC.

Summary:

The repeal of the Texas Women's Health Program rules is necessary as TWHP will no longer exist as of July 1, 2016. Rules for the new consolidated women's health program, Healthy Texas Women, are being proposed by HHSC under Title 1 of the Texas Administrative Code, Part 15, Chapter 382, Subchapter A.

Key Health Measures:

New rules are being developed for the new program, Healthy Texas Women, and will be proposed to HHSC.

Summary of Input from Stakeholder Groups:

Stakeholder input was requested via email. The repealed rules were sent to all current contractors, local and state government, federally qualified health centers, for profit and non-profit entities, special interest groups, Women's Health Advisory Committee members, and other interested parties. Two questions have been received thus far. One question was received regarding the timeline for the development of the new rules, and one question asking for clarification about the repeal.

Proposed Motion:

Motion to recommend HHSC approval for publication of repealed rules contained in agenda item # 4.b.

Approved by Assistant Commissioner/Director: Evelyn Delgado **Date:** 12/2/2015

Presenter: Lesley French **Program:** Associate Commissioner, Women's Health Services **Phone No.:** 512-776-2001

Approved by CPEA: Carolyn Bivens **Date:** 12/17/2015

Title 25. Health Services
Part 1. Texas Department of State Health Services
Chapter 39. Primary Health Care Services Program
Subchapter B. Texas Women's Health Program
Repeals §§39.31 - 39.45

Proposed Preamble

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes the repeal of §§39.31 - 39.45, concerning the Texas Women's Health Program.

BACKGROUND AND PURPOSE

The Texas Women's Health Program operates within the department's Preventive and Primary Care Unit's (PPCU) Primary Health Care Services Program, which has statutory authority to provide to eligible clients primary health care services, including family planning services and health screenings. The Texas Women's Health Program provides clients—women ages 18 - 44 who are at or below 185% of the federal poverty level—with family planning and related services, including annual contraceptives, testing for breast and cervical cancer, testing for sexually transmitted infections (STIs), and treatment for certain STIs.

In 2014, the Sunset Advisory Commission reviewed the Texas Health and Human Services enterprise, including its women's health programs. In December 2014, the Sunset Commission issued the management decision to require HHSC to consolidate the women's health care programs in order to improve service and efficiency for clients and providers. This decision included the recommendation to consolidate the existing Texas Women's Health Program at HHSC and the Expanded Primary Health Care Program at the department into one program and division at HHSC.

In response to the Sunset Commission's recommendations, the 84th Legislature enacted Texas Government Code, §531.0201(a)(2)(C) to transfer client services functions performed by the department to HHSC. Texas Government Code, §531.0204(a)(1) and (3)(A) were also enacted to require the Executive Commissioner of HHSC to develop a transition plan which included an outline of the HHSC's reorganized structure, and to define client services functions.

Furthermore, the 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015, merged the women's health strategies (DSHS Strategy B.1.3., Family Planning Services, and Strategy B.1.4., Community Primary Care Services) into a single strategy within the HHSC Budget (HHSC Strategy D.2.3., Women's Health Services). To increase access to women's health and family planning services, Rider 76, Article II, allocated \$100 million for the new women's health programs.

The transition plan developed by HHSC pursuant to Texas Government Code, §531.0204, included the transfer of women's health services performed in the HHSC Texas Women's Health Program and the department's Expanded Primary Health Care Program and Family Planning Program to HHSC as of September 1, 2015. HHSC's transition plan also details the consolidation of the Texas Women's Health Program and Expanded Primary Health Care Program.

On July 1, 2016, HHSC will consolidate the Texas Women's Health Program and the Expanded Primary Healthcare Program into a new program fully funded by state general revenue. The new program will be named the Healthy Texas Women Program. The Healthy Texas Women Program will be a successor

program to the Medicaid Women's Health Program and therefore subject to Texas Human Resources Code, §32.024(c-1).

SECTION-BY-SECTION SUMMARY

New rules for the Healthy Texas Women Program are currently being proposed under HHSC in 1 TAC Chapter 382, Subchapter A. As a result, §§39.31 - 39.45 governing the department's Texas Women's Health Program are no longer necessary and must be repealed.

FISCAL NOTE

Lesley French, Women's Health Program, Director, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Lesley French has also determined that there will not be an adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Lesley French has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of repealing the sections will be continued access to health services for eligible, low-income women in Texas through the proposed new program at HHSC.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Meagan Kirby, Program Specialist, Department of State Health Services P.O. Box 149347, Austin, Texas 78714-934; by fax to (512) 776-7203; or by email to Meagan.kirby@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeal of the rules has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

These repeals are authorized generally by Health and Safety Code, §12.001 and §1001.071, and more specifically by Health and Safety Code, §§31.002(a)(4)(C) and (H), 31.003, and 31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program. In addition, by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The rules affect Government Code, Chapter 531; and Health and Safety Code, Chapters 31 and 1001.

Sections for repeal:

- §39.31. Introduction.
- §39.32. Non-entitlement and Availability.
- §39.33. Definitions.
- §39.34. Client Eligibility.
- §39.35. Application Procedures.
- §39.36. Financial Eligibility Requirements.
- §39.37. Denial, Suspension, or Termination of Services; Client Appeals.
- §39.38. Health-Care Providers.
- §39.39. Covered Services.
- §39.40. Non-covered Services.
- §39.41. Reimbursement.
- §39.42. Provider's Request for Review of Claim Denial.
- §39.43. Confidentiality.
- §39.44. Audits; Reports.
- §39.45. Severability.

CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER B. TEXAS WOMEN'S HEALTH PROGRAM

~~Repeal Rule Text~~

~~§39.31 Introduction~~

~~(a) Governing rules. Notwithstanding any contrary provision in Subchapter A of this chapter, this subchapter sets out rules governing the administration of the Texas Women's Health Program (TWHP) within the DSHS's Primary Health Care Services Program.~~

~~(b) Authority. This subchapter is authorized generally by Health and Safety Code, §12.001 and §1001.071, and more specifically by Health and Safety Code, §31.002(a)(4)(C) and (H), §31.003, and §31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program.~~

~~(c) Objectives. As reflected in several enactments of the Texas Legislature (including, but not limited to, Human Resources Code, §32.024(c-1)), the TWHP is established to achieve the following overarching objectives:~~

~~(1) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;~~

~~(2) to ensure the efficient and effective use of state funds in support of these objectives and to avoid the direct or indirect use of state funds to promote or support elective abortion;~~

~~(3) to reduce the overall cost of publicly funded health care (including federally funded health care) by providing low income Texans access to safe, effective services that are consistent with these objectives; and~~

~~(4) to the extent permitted by the Constitution of the United States and in addition to the restrictions imposed by this subchapter, to enforce Human Resources Code, §32.024(c-1), and any other state law that regulates delivery of non-federally funded family planning services.~~

~~§39.32 Non-entitlement and Availability~~

~~(a) No entitlement. This subchapter does not establish an entitlement to the services described in this subchapter.~~

~~(b) Fund availability. The services described in this subchapter are subject to the availability of appropriated funds.~~

~~§39.33 Definitions~~

~~The following terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.~~

~~(1) Affiliate—~~

~~(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:~~

~~(i) common ownership, management, or control;~~

~~(ii) a franchise; or~~

~~(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.~~

~~(B) The written instruments referenced in subparagraph (A) of this paragraph may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group agreement, staffing agreement, management agreement, or collaborative practice agreement.~~

~~(2) Applicant—A woman applying to receive services under TWHP, including a current recipient who is applying to renew.~~

~~(3) Budget group—Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.~~

~~(4) Client—A woman who receives services through TWHP.~~

~~(5) Corporate entity—A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, and a sole proprietorship.~~

~~(6) Covered service—A medical procedure for which TWHP will reimburse an enrolled health-care provider, as listed in §39.39 of this title (relating to Covered Services).~~

~~(7) DSHS—The Department of State Health Services.~~

~~(8) Elective abortion—The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:~~

~~(A) to terminate a pregnancy that resulted from an act of rape or incest;~~

~~(B) in a case in which a woman suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy,~~

~~that would, as certified by a physician, place the woman in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or~~

~~(C) in a case in which a fetus has a severe fetal abnormality, meaning a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.~~

~~(9) Family planning services—Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.~~

~~(10) Health care provider—A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.~~

~~(11) Health clinic—A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.~~

~~(12) TWHP—Texas Women's Health Program.~~

~~(13) TWHP provider—A health care provider that performs covered services.~~

~~§39.34 Client Eligibility~~

~~(a) Criteria. A woman is eligible to receive services through TWHP if she:~~

~~(1) is 18 through 44 years of age, inclusive;~~

~~(2) is not pregnant;~~

~~(3) is not sterile, infertile, or unable to get pregnant because of medical reasons;~~

~~(4) has countable income (as calculated under §39.36 of this title (relating to Financial Eligibility Requirements)) that does not exceed 185 percent of the Federal Poverty Level, as published annually in the *Federal Register* by the United States Department of Health and Human Services;~~

~~(5) is a United States citizen, a United States national, or an alien who qualifies under §39.35(h) of this title (relating to Application Procedures);~~

~~(6) resides in Texas;~~

~~(7) does not currently receive benefits through a Medicaid program, Children's Health Insurance Program, or Medicare Part A or B;~~

~~(8) does not have creditable health coverage that covers the services TWHP provides, except as specified in subsection (d) of this section;~~

~~(9) is not a patient at a State mental hospital as defined in Health and Safety Code, §571.003(21); and~~

~~(10) is not incarcerated in any penal facility maintained under governmental authority. The term "incarcerated" means the involuntary physical restraint of a woman who has been arrested for or convicted of a crime.~~

~~(b) Age. For purposes of subsection (a)(1) of this section, an applicant is considered 18 years of age the month of her 18th birthday and 44 years of age through the month of her 45th birthday. A woman is ineligible for TWHP if her application is received the month before her 18th birthday or the month after she turns 45 years of age.~~

~~(c) Resources. DSHS or its designee does not request or verify resources for TWHP.~~

~~(d) Third party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to DSHS or its designee, her belief that a liable third party may retaliate against her or cause physical or emotional harm if she assists DSHS or its designee (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive TWHP benefits.~~

~~(e) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months after her application is approved, unless:~~

~~(1) the client dies;~~

~~(2) the client voluntarily withdraws;~~

~~(3) the client no longer satisfies criteria set out in subsection (a) of this section;~~

~~(4) state law no longer allows the woman to be covered; or~~

~~(5) DSHS or its designee determines the client provided information affecting her eligibility that was false at the time of application.~~

~~(f) Transfer of eligibility. A woman who, when these rules becomes effective, receives services through the Medicaid Women's Health Program is automatically enrolled as a TWHP client and is eligible to receive covered services for as long as she would have been eligible for the Medicaid Women's Health Program.~~

~~§39.35 Application Procedures~~

~~(a) Application. A woman, or an individual acting on the woman's behalf, may apply for TWHP services by completing an application form and providing documentation as required by DSHS or its designee.~~

~~(1) An applicant may obtain an application in the following ways:~~

~~(A) from a local benefits office of the Health and Human Services Commission, a TWHP provider's office, or any other location that makes TWHP applications available;~~

~~(B) from the TWHP website;~~

~~(C) by calling 2-1-1; or~~

~~(D) by any other means approved by DSHS or its designee.~~

~~(2) DSHS or its designee accepts and processes every application received through the following means:~~

~~(A) in person at a local benefits office of the Health and Human Services Commission;~~

~~(B) by fax; or~~

~~(C) through the mail.~~

~~(b) Processing timeline. DSHS or its designee processes a TWHP application by the 45th day after the date DSHS or its designee receives the application.~~

~~(c) Start of coverage. Program coverage begins on the first day of the month in which DSHS or its designee receives a valid application. A valid application has, at a minimum, the applicant's name, address, and signature.~~

~~(d) Exclusive application. The TWHP application form may not be used to apply for any other programs.~~

~~(e) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), DSHS or its designee requires an applicant to provide or apply for a social security number. DSHS or its designee requests, but does not require, budget group members who are not applying for TWHP to provide or apply for an SSN.~~

~~(f) Face-to-face interviews. In general, DSHS or its designee does not require an applicant to attend a face-to-face interview unless DSHS or its designee has received conflicting information related to the household membership or income that affects eligibility. An applicant may, however, request a face-to-face or telephone interview for an initial or a renewal application.~~

~~(g) Identity. An applicant must verify her identity the first time she applies to receive covered services.~~

~~(h) Citizenship. If an applicant is a citizen, she must provide proof of citizenship. If the applicant, who is otherwise eligible to receive TWHF services, is not a citizen, DSHS or its designee determines her eligibility in accordance with 1 TAC §366.513 (relating to Citizenship).~~

~~§39.36 Financial Eligibility Requirements~~

~~(a) Calculating countable income. Unless an applicant is adjunctively eligible as described in subsection (b) of this section, DSHS or its designee determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, DSHS or its designee adds the incomes listed in paragraph (1) of this subsection, less any deductions listed in paragraph (2) of this subsection, and exempting any amounts listed in paragraph (3) of this subsection.~~

~~(1) DSHS or its designee determines countable income in accordance with 1 TAC §366.531(a) (relating to Determining Whose Income Counts).~~

~~(2) In determining countable income, DSHS or its designee deducts the items set forth in 1 TAC §366.533 (relating to Allowable Income Deductions).~~

~~(3) DSHS or its designee exempts from the determination of countable income the items set out in 1 TAC §366.535 (relating to Exempt Income).~~

~~(b) Adjunctive eligibility. An applicant or client is considered adjunctively eligible at an initial or renewal application, and therefore financially eligible, if:~~

~~(1) a member in her budget group receives benefits under the Women, Infants, and Children (WIC) supplemental nutrition program;~~

~~(2) she is a member of a certified Supplemental Nutrition Assistance Program (SNAP) household;~~

~~(3) she is in a Children's Medicaid budget group for someone receiving Medicaid; or~~

~~(4) she is receiving Temporary Assistance for Needy Families (TANF) cash or is in a TANF budget group for someone receiving TANF cash.~~

~~§39.37 Denial, Suspension, or Termination of Services; Client Appeals~~

~~(a) Notice and opportunity for hearing. DSHS or its designee may deny, suspend, or terminate services to an applicant or client if it determines that the applicant or client is ineligible to participate.~~

~~(b) Notice and opportunity for a fair hearing. Before DSHS or its designee finalizes the denial, suspension, or termination under subsection (a) of this section, the applicant or client will be notified and provided an opportunity for a fair hearing.~~

~~(c) Appeal procedures. An applicant or client who is aggrieved by the denial, suspension, or termination of services under subsection (a) of this section may appeal the decision in accordance with Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures). An applicant or client may not appeal a decision to deny, suspend, or terminate services if the decision is the result of a decision by the State to reduce or stop funding the program.~~

~~§39.38 Health Care Providers~~

~~(a) Procedures. A TWHP provider must comply with the requirements set out in 1 TAC Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers).~~

~~(b) Qualifications. A TWHP provider must ensure that:~~

~~(1) the provider does not perform or promote elective abortions outside the scope of the TWHP and is not an affiliate of an entity that performs or promotes elective abortions; and~~

~~(2) in offering or performing a TWHP service, the provider:~~

~~(A) does not promote elective abortion within the scope of the TWHP;~~

~~(B) maintains physical and financial separation between its TWHP activities and any elective abortion performing or abortion promoting activity, as evidenced by the following:~~

~~(i) physical separation of TWHP services from any elective abortion activities, no matter what entity is responsible for the activities;~~

~~(ii) a governing board or other body that controls the TWHP health care provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;~~

~~(iii) accounting records that confirm that none of the funds used to pay for TWHP services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and~~

~~(iv) display of signs and other media that identify TWHP and the absence of signs or materials promoting elective abortion in the provider's location or in the provider's public electronic communications; and~~

~~(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.~~

~~(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:~~

~~(1) taking affirmative action to secure elective abortion services for a TWHP client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a provider;~~

~~(2) furnishing or displaying to a TWHP client information that publicizes or advertises an elective abortion service or provider; or~~

~~(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.~~

~~(d) Compliance information. Upon request, a TWHP provider must provide DSHS or its designee with all information DSHS or its designee requires to determine the provider's compliance with this section.~~

~~(e) Provider disqualification. If, after the effective date of this section, DSHS or its designee determines that a TWHP provider fails to comply with subsection (b) of this section, DSHS or its designee will disqualify the provider from TWHP.~~

~~(f) Client assistance and recoupment. If a TWHP provider is disqualified, DSHS or its designee will take appropriate action to:~~

~~(1) assist a TWHP client to find an alternate provider; and~~

~~(2) recoup any funds paid to a disqualified provider for TWHP services performed during the period of disqualification.~~

~~(g) Certification. Upon initial application for enrollment in the TWHP, a provider must certify its compliance with subsection (b) of this section and any other requirement specified by DSHS or its designee. Each provider enrolled in TWHP must annually certify that the provider complies with subsection (b) of this section.~~

~~(h) Exemption from initial certification. The initial application requirement of subsection (g) of this section does not apply to a provider that certified and was determined to be in compliance with the requirements of the Women's Health Program administered by the Health and Human Services Commission pursuant to Human Resources Code, §32.024(c 1).~~

~~§39.39 Covered Services~~

~~A client may receive the following services through TWHP:~~

- ~~(1) annual family planning exam and Pap test;~~
- ~~(2) follow up visits related to the chosen contraceptive method;~~
- ~~(3) counseling on specific methods and use of contraception (as part of evaluation and management services), including natural family planning and excluding emergency contraception;~~
- ~~(4) female sterilization;~~
- ~~(5) follow up visits related to sterilization, including procedures to confirm sterilization;~~
- ~~(6) family planning services as listed in the Texas Medicaid Provider Procedures Manual, including:~~
 - ~~(A) pregnancy tests;~~
 - ~~(B) sexually transmitted infection (STI) screenings;~~
 - ~~(C) treatment of certain STIs; and~~
 - ~~(D) contraceptive methods; and~~
- ~~(7) lab services related to a service listed in paragraphs (1) – (6) of this section.~~

~~§39.40 Non-covered Services~~

~~TWHP does not cover:~~

- ~~(1) counseling on and provision of abortion services;~~
- ~~(2) mammography and diagnostic services for breast cancer;~~
- ~~(3) treatment for any condition diagnosed during a TWHP visit, other than a sexually transmitted infection for which treatment is a covered service;~~
- ~~(4) a visit for a pregnancy test only;~~
- ~~(5) a visit for a sexually transmitted infection test only;~~
- ~~(6) a follow up after an abnormal Pap test;~~
- ~~(7) counseling on and provision of emergency contraceptives; or~~
- ~~(8) other visits that cannot be appropriately billed with a permissible procedure code.~~

~~§39.41 Reimbursement~~

~~(a) Reimbursement. Services provided through TWHP will be reimbursed in accordance with 1 TAC Chapter 355 (relating to Reimbursement Rates).~~

~~(b) Claims procedures. A TWHP provider must comply with 1 TAC Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers) and Division 5 (relating to Physician and Physician Assistant Services).~~

~~(c) Improper use of reimbursement. A TWHP provider may not use any funds received for providing a covered service to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.~~

~~§39.42 Provider's Request for Review of Claim Denial~~

~~(a) Review of denied claim. A TWHP provider may request a review of a denied claim. The request must be submitted as an administrative appeal under 1 TAC §354.2217 (relating to Provider Appeals and Reviews).~~

~~(b) Appeal procedures. The administrative appeal will be subject to the timelines and procedures set out in 1 TAC §354.2217 and all other procedures and timelines applicable to a provider's appeal of a Medicaid claim denial.~~

~~§39.43 Confidentiality~~

~~(a) Confidentiality required. A TWHP provider must maintain all family planning information as confidential to the extent required by law.~~

~~(b) Written release authorization. Before a TWHP provider may release any information that might identify a client, the client must authorize the release in writing.~~

~~(c) Confidentiality training. A TWHP provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.~~

~~(d) Records monitoring. A TWHP provider must monitor client records to ensure that only appropriate staff and DSHS or its designee may access the records.~~

~~(e) Assurance of confidentiality. A TWHP provider verbally must assure each client that her records are confidential and must explain the meaning of confidentiality.~~

~~§39.44 Audits; Reports~~

~~(a) Compliance audits. DSHS or the Health and Human Services Commission's Office of Inspector General may audit any TWHP provider to verify compliance with any applicable law or regulation.~~

~~(b) Reporting duties. A TWHP provider must submit information to DSHS or its designee as DSHS or its designee requires.~~

~~§39.45 Severability~~

~~(a) The Texas Legislature, in enacting Human Resources Code, §32.024(c-1), confirmed its intent that the Texas Women's Health Program, as successor to the Medicaid Women's Health Program, must be operated only in a manner that ensures:~~

~~(1) that no funds spent under the program are spent to perform or promote elective abortions; and~~

~~(2) compliance with the conditions specified in former Human Resources Code, §32.0248, which prohibit contracts with entities that perform or promote elective abortions and affiliates of such entities.~~

~~(b) DSHS, as the agency responsible for administering the TWHP, is subject to the conditions specified in Human Resources Code, §32.024(c-1). Its authority to operate the program is thus strictly limited, and DSHS has no authority to operate the TWHP except in compliance with such conditions.~~

~~(c) Section 39.33(1) of this title (relating to Definitions) and §39.38 of this title (relating to Health Care Providers) are necessary and integral to the implementation of the requirements of Human Resources Code, §32.024(c-1), the fulfillment of legislative intent, and the achievement of the objectives of the TWHP. As such, DSHS regards the provisions and application of these sections as essential aspects of DSHS's compliance with state law and, therefore, not severable from the other provisions of this subchapter.~~

~~(d) Accordingly, to the extent that §39.33(1), §39.38, or this section is determined by a court of competent jurisdiction to be unconstitutional or unenforceable, or to the degree an official or employee of DSHS, HHSC, or the State of Texas is enjoined from enforcing these sections, DSHS shall regard this entire subchapter as invalid and unenforceable and shall cease operation of the program.~~

~~(e) To the extent that any part of this subchapter other than §39.33(1), §39.38, or this section are enjoined, DSHS or its designee may enforce the parts of the subchapter not affected by such injunctive relief to the extent that DSHS or its designee determines it can do so consistently with the legislative intent and the objectives of this subchapter.~~